

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

September 6, 2001 Session

**DWAYNE E. ANDERSON v. STATE OF TENNESSEE**

**An Appeal from the Tennessee Claims Commission**  
**No. 20100443     Randy Camp, Commissioner**

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**No. W2001-01354-COA-R3-CV - Filed June 5, 2002**

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This is an appeal by a plaintiff prisoner seeking review of the Tennessee Claims Commission's dismissal of his case for lack of subject matter jurisdiction. The Claims Commission dismissed the plaintiff's petition, finding that it did not have jurisdiction to hear intentional tort claims. We affirm, finding that Tennessee Code Annotated § 9-8-307 does not confer jurisdiction on the Claims Commission to hear intentional tort claims or claims based on the negligent deprivation of constitutional rights.

**Tenn R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims Commission is Affirmed**

HOLLY K. LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Dwayne E. Anderson, appellant, pro se.

Paul G. Summers, Attorney General, Michael E. Moore, Solicitor General, and Mark A. Hudson, Senior Counsel for the appellee, State of Tennessee.

**OPINION**

This is an appeal by a plaintiff prisoner seeking review of the Tennessee Claims Commission's dismissal of his case for lack of subject matter jurisdiction. The recitation of the facts underlying the plaintiff's claims is derived from the complaint filed in this cause.

On June 1, 2000, Officer William Webb, while acting within the scope of his employment at the West Tennessee State Penitentiary, intentionally sprayed inmate Dwayne Anderson with "pepper spray" and allegedly attempted to hit him with a riot stick. According to Webb, he was

defending himself against an assault by Anderson, who allegedly grabbed Webb's arm through the "pie-flap" of his cell.<sup>1</sup>

On the day of the incident, Anderson filed a grievance against Officer Webb. On June 2, 2000, Webb filed an incident report based on Anderson's conduct. On the same day, Anderson filed a second grievance, claiming that Webb filed a false incident report to justify his use of the pepper spray.<sup>2</sup> In the meantime, based on Webb's incident report, the Warden of the institution issued a thirty (30)-day recreational restriction against Anderson.

On June 15, 2000, the grievance committee held a hearing. The next day, acting on the recommendation of the committee, the Warden determined that Webb's use of pepper spray was justified. Anderson appealed that decision to the Assistant Commissioner of Operations, Jim Rose. On June 28, 2000, Rose denied the appeal, finding that the decision of the grievance committee was appropriate.

On June 24, 2000, Anderson filed a request for an investigation and prosecution against the officers involved in his alleged assault with the Governor of Tennessee, Don Sundquist. The Governor's office disregarded the request. The matter was referred to the Commissioner of the Department of Correction, but the Commissioner deferred to the decision of assistant commissioner Rose and denied any relief.

On September 19, 2000, Anderson filed a claim for damages against the State of Tennessee with the Division of Claims Administration under Tennessee Code Annotated § 9-8-402(a), alleging that Webb intentionally assaulted him, and that the corrections employees and the Governor were negligent in handling his grievances. On December 20, 2000, Anderson's claim for damages was transferred to the Tennessee Claims Commission. The State then filed a motion to dismiss, arguing that the intentional tort claim should be dismissed for lack of subject matter jurisdiction, and that the State is immune from liability for any decision regarding the investigation of Anderson's allegations because the actions of the officers are shielded by "discretionary function immunity." The Claims Commission granted the State's motion and dismissed Anderson's claim, concluding that "[t]he Claims Commission does not have jurisdiction to hear intentional tort claims," and that the "[d]efendant's motion is well-taken for the reasons set forth in its memorandum." From that decision, Anderson now appeals.

Anderson first argues that the Claims Commission erred in dismissing his "assault and battery" claim for lack of subject matter jurisdiction because he did not allege an "intentional" tort. With respect to his negligent investigation claims, he argues that discretionary function immunity does not attach in this case.

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<sup>1</sup> A "pie-flap" is similar to a mail slot in one's front door, used to pass food and other items to an inmate.

<sup>2</sup> The second grievance was dismissed because it was duplicative of the first. The propriety of that dismissal is not at issue in this appeal. Furthermore, we address all of the issues raised by Anderson in his grievances in this Opinion.

Issues of law are reviewed de novo, with no presumption of correctness in the decision of the Claims Commission. *See Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996). Review of a procedure of a state administrative agency is conducted pursuant to Tennessee Code Annotated § 4-5-322(h), which provides in pertinent part:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5) Unsupported by evidence which is both substantial and material in the light of the entire record.

Tenn. Code Ann. § 4-5-322(h) (1998).

Anderson first argues that his “assault and battery” claim did not allege an intentional tort, and that therefore the Claims Commission erred in dismissing that claim for lack of jurisdiction. Though the State is generally immune from suit, the State has waived such immunity in certain cases brought before the Claims Commission. Under Tennessee Code Annotated 9-8-307(a)(1), the Claims Commission has exclusive jurisdiction to adjudicate a claim against the State based on acts or omissions of State employees if the claim falls within one of the categories enumerated in that statute. *See* Tenn. Code Ann. § 9-8-307(a)(1). The statute does not grant the Claims Commission jurisdiction to hear a claim based on an intentional tort. *See Shell v. State*, 893 S.W.2d 416, 421 (Tenn. 1995). Anderson’s allegations against Officer Webb amount to an intentional tort, namely, unprovoked assault by the use of pepper spray and a riot stick. Therefore, the Claims Commission acted properly in refusing to exercise jurisdiction over that claim. *See Northland Ins. Co. v. State*, No. 01-A-01-9811-BC-00616, 1999 Tenn. App. LEXIS 635, at \*12 (Tenn. Ct. App. Sept. 21, 1999) (reversing because the commission lacked subject matter jurisdiction to hear indemnity or contribution claims).

Anderson also alleges that the Claims Commission erred in dismissing his claims against the State premised on the allegedly negligent investigation conducted by certain state officials, including the Governor. In essence, Anderson claims that those officials negligently denied him the constitutional right to due process. A former version of Tennessee Code Annotated § 9-8-307(a)(1)(N) conferred jurisdiction on the Claims Commission to hear claims for “[n]egligent deprivation of statutory *or constitutional* rights created under Tennessee law . . . .” *Shell*, 893 S.W.2d at 418. In 1989, however, the emphasized portion of this statute was eliminated because the United States Supreme Court in *Daniels v. Williams*, 474 U.S. 327 (1986), held that mere negligence of a state official does not give rise to a due process claim. *Shell*, 893 S.W.2d at 419

(relying on legislative history of the 1989 amendment). In this case, Anderson claims that he was negligently denied due process by state officials; therefore, the Claims Commission did not err in refusing to exercise jurisdiction over those claims. In light of this holding, all other issues raised by Anderson are pretermitted.

The decision of the Claim Commission is affirmed. Cost are to be taxed to the appellant, Dwayne E. Anderson, and his surety, for which execution may issue if necessary.

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HOLLY K. LILLARD, JUDGE